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March 27, 2009

Hon. Thomas J. McAvoy
Senior U.S. District Judge
United States District Court
for the Northern District of New York
Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, NY 13901

Re: *Grant v. National Board of Medical Examiners, et al.*
07-cv-0996 (GJD/TJM)

Dear Judge McAvoy,

We represent the defendants, National Board of Medical Examiners and Federation of State Medical Boards, in the above referenced action. On November 19, 2008, plaintiff filed a motion for leave to amend his complaint. On December 5, 2008, defendants opposed that motion and filed a cross motion for summary judgment. Plaintiff filed his opposition to defendants' cross motion on February 12, 2009 and defendants filed their reply on February 27, 2009.

Last week, several weeks after briefing was complete, we received from plaintiff a Supplemental Response to the Defendants' Motion for Summary Judgment (the "Supplemental Response"), which included a copy of the opposition affidavit he had previously filed with the Court. We have not received an ECF notice indicating that plaintiff's Supplemental Response has been filed; however, we understand that the Court now has a copy of the Supplemental Response, together with an additional document entitled "The Judge Advocate General's School Guide to the Service Members' Civil Relief Act," and is reviewing them for acceptance.

Plaintiff's Supplemental Response appears to be a belated attempt to (1) remedy his failure to file a response to defendants' Local Rule 7(a) Statement of Undisputed Facts, and (2) raise the Service Members' Civil Relief Act in opposition to defendants' argument that many of his original and proposed new claims are barred by the applicable statutes of limitations.

Defendants take the position that plaintiff's untimely attempt to respond to defendants' Local Rule 7(a) Statement should be rejected and that his failure to raise the Service Members' Civil Relief Act in his opposition papers constitutes a waiver of that argument. If, however, the

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Court does decide to consider plaintiff's Supplemental Response, defendants respectfully request the opportunity to file a brief response.

We thank the Court for its consideration.

Respectfully submitted,

s/Heidi S. Martinez

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HSM/lh

cc: C. Earl Grant